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RB 7/9/02

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

CRAIG M. HOWARD
Plaintiff**v.**
**LIBERTY LIFE ASSURANCE
COMPANY OF BOSTON,
LIBERTY MUTUAL GROUP**
Defendant
**Case No. 1:CV-01-0797
(Judge Yvette Kane) ✓**
FILED
HARRISBURG, PA

JUL 9 8 2002

MARY E. D'ANDREA, CLERK
Per RB Deputy Clerk

**PLAINTIFF'S RESPONSE TO DEFENDANT'S
SUPPLEMENTAL PRETRIAL MEMORANDUM**

At the Pretrial Conference held before The Honorable Yvette Kane on June 28, 2002, Defense counsel, on being questioned by the Judge about his reluctance to comply with Plaintiff's discovery requests, launched into an agitated defense, misquoting the record and making bald, inaccurate factual statements in an attempt to support his position that he had in good faith replied to Plaintiff's discovery requests. Judge Kane suggested that Defense counsel put his position in a written communication to the Court and apparently "Supplemental Pretrial Memorandum of Defendant's" is in response.

Plaintiff feels constrained to respond since Defendant's counsel has consistently and continually misrepresents the situation. The fundamental problems concerns what material was forwarded to Plaintiff's counsel with Mr. Foster's letter of July 20, 2001. Although it references a copy of Liberty Life's claim file, Plaintiff received only misarray of documents representing a small portion of a claim file. This was evident when at the Attorney's Conference of June 17, 2002, a copy of the claim file was eventually produced.

A. Interrogatories

Defendant maintains that it answered 19 of Plaintiff's 25 Interrogatories. His own exhibit, consisting of the answers to Interrogatories belies this assertion.

- 1) The answer to interrogatory #1 is incomplete in that it does not give Ms. McGee's position or business address. This was supplied later in a letter dated May 21, 2002.
- 2) Although Plaintiff's counsel promptly agreed to the confidentiality of the claims procedure manual, it was not produced until June 13, 2002.
- 3) Interrogatories 3, 4, 5, 6, 7, 8, 9, 10, 11, 12 and 16 were not responded to with the requested particularity. They merely

allege that the information sought is contained in documents, not specified, previously advised to Plaintiff's counsel.

4. Interrogatories 17, 18, 19, 21, 22, 23 and 25 are objected to; though Interrogatory 23 was subsequently answered after ruling by the Court.

5. The answer to Interrogatory 24 is incomplete.

In summary, Defendant only fully answered one Interrogatory, though later it did answer several others.

It is submitted that the record establishes that Defendant has not complied with the Court's Orders and of the Federal Rules of Civil Procedure relating to Interrogatories.

B. Depositions

1) Deposition Notices for four employees of Defendant were served February 13, 2002.

No response was received from Defendant. It was asked for confirmation of the depositions, under date of February 20, 2002, (copy of letter attached as Exhibit "A"). This followed Plaintiff's letter of February 13 requesting the depositions. (See Exhibit "B"). Defense counsel had never contacted Plaintiff's

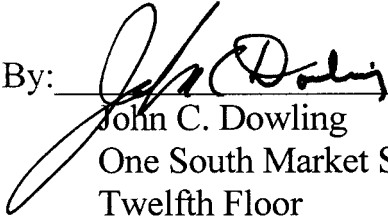
counsel with respect to the availability of the witnesses but simply telephoned the day before to say that the witnesses would not be made available. Despite requests we still did not have the precise addresses of these witnesses.

DESPITE DEFENDANT'S RELUCTANCE TO FULLY COMPLY WITH DISCOVERY, PLAINTIFF, WITH THE POSSIBLE EXCEPTION OF PRESENTING AN EXPERT WITNESS, IS WILLING TO PROCEED TO DISPOSITION OF THIS MATTER.

Settlement discussions have been rather fruitless, and it is respectfully suggested that the Court might want to consider referring the matter to Judge Smiser for a non-binding mediation conference.

Plaintiff's reaffirms the position taken in his pretrial memorandum and his proposed findings of fact and conclusions of law heretofore submitted.

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Dated: July 8, 2002

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February 20, 2002

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FILE NO.

7583/01

Re: Craig M. Howard v. Liberty Life Assurance Company of Boston

**VIA FAX (215) 985-0675
and U.S. Mail**

William C. Foster, Esquire
Kelly, McLaughlin & Foster, LLP
1617 J.F.K. Boulevard, Suite 1690
Philadelphia, PA 19103

Dear Mr. Foster:

Please confirm depositions of Maureen Riley, Chuck Johnson, Felicia Boyd and Edward P. Crouch, M.D. scheduled for Friday, February 22, 2002 at 10:00 a.m. in our offices.

Very truly yours,

RHOADS & SINON LLP

By:
John C. Dowling

JCD/lgr

B

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FILE NO.
 7583/01

February 13, 2002

Re: Craig M. Howard v. Liberty Life Assurance Company of Boston

William C. Foster, Esquire
 Kelly, McLaughlin & Foster, LLP
 1617 J.F.K. Boulevard, Suite 1690
 Philadelphia, PA 19103

VIA FACSIMILE 215/985-0675
 And U.S. First Class Mail

Dear Mr. Foster:

Not having received an Order from Judge Kane in response to our respective letter briefs and considering the completion date for discovery as set forth in the Case Management Plan (as amended) I am requesting that you present the following for deposition in our office on Friday, February 22, 2002 in Harrisburg:

1. Maureen Riley identified in answer to interrogatory 24 as the Manager – Group Underwriting on the file;
2. Chuck Johnson, who authored the letter of July 25, 2000 and February 28, 2001, as noted as the “Appeal Review Consultant”;
3. Felicia Boyd, disclosed by Defendant in the Case Management Plan as the “Disability Case Manager”;
4. Edward P. Crouch, M.D., disclosed by Defendant in the Case Management Plan as the “Medical Director, Disability Products”.

If the time is not convenient, please advise and I will try to work out a satisfactory date with you keeping in mind the discovery deadlines. Please also advise me if a subpoena for any of these deponents is necessary and if so their address.

I note in your letter of January 16, 2002, you are willing to provide additional information regarding interrogatories 2 and 5. In reference to interrogatory 2, if you will produce a copy of the claim procedures manual, we would, of course, agree that the information is confidential and

RHOADS & SINON LLP

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will agree to a protective order relating to it. Your reference to “point 2” is somewhat contradictory but in any event, please supply whatever additional information you are agreeable to.

Any questions please call.

Very truly yours,

RHOADS & SINON LLP

By:

John C. Dowling

JCD/clz

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of July, 2002, a true and correct copy of the foregoing "Plaintiff's Response to Defendant's Supplemental Pretrial Memorandum " was served by means of U.S. First Class Mail, postage prepaid upon the following:

William C. Foster, Esquire
Kelly, McLaughlin & Foster, LLP
1617 J.F.K. Boulevard, Suite 1690
Philadelphia, PA 19103

A handwritten signature in cursive script, reading "Cynthia L. Zicarelli", written over a horizontal line.